

Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,468

REMARKS

In view of the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-10, 22-27, 43-51, 66 and 80-84, the only claims pending and currently under examination in this application.

Claim 1 has been amended to further specify that the aspiration element does not occlude the target site when activated, support for this amendment being found in the specification at page 14, lines 2 to 31. Claim 43 has been amended to specify that the detector is located at an upstream location of the non-occlusive aspiration element, support for this amendment being found at least in Figure 9 and the supporting discussion at page 35, lines 27 ff. As the above amendment introduces no new matter, its entry by the Examiner is respectfully requested.

Claims 1-10 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Movahed (2002/0099254).

As amended, the Claim 1 specifies that the aspiration element does not occlude the target site when activated. This is opposite to the method disclosed by Movahed, in which the balloon is inflated to occlude the CS during fluid removal.

As such, Movahed does not anticipate Claims 1-10 under 35 U.S.C. § 102(e) and this rejection may be withdrawn.

Next, Claims 22-44, 47, 50 and 80 were rejected under 35 U.S.C. § 103 (a) as obvious over Movahed in view of Bernard.

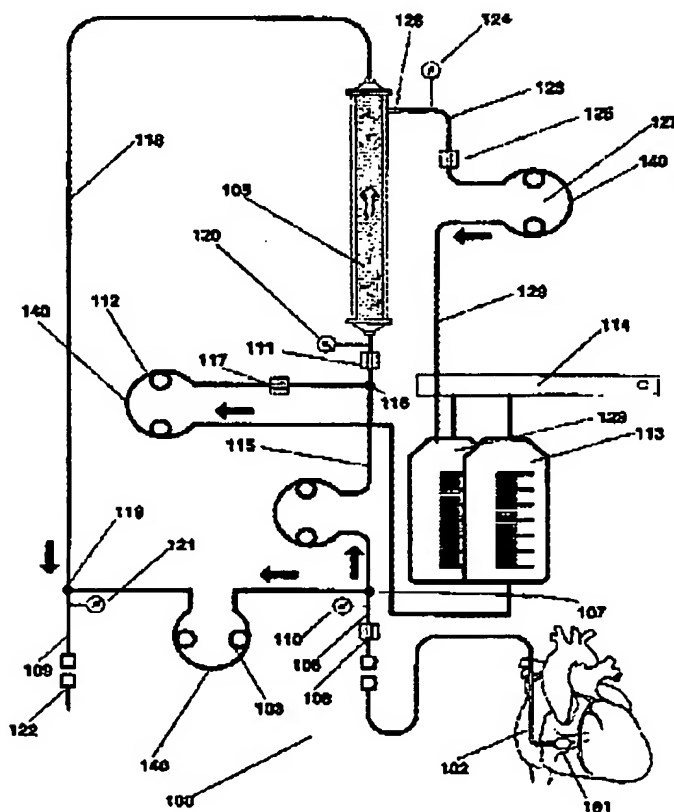
In making this rejection, the Examiner acknowledges that Movahed fails to teach or suggest the detector element as claimed. However, the Examiner asserts that Bernard teaches a detector element which assertedly makes up for this deficiency in

Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,468

Movahed.

As claimed, the detector element must be located at a position upstream of the non-occlusive aspiration element. The term upstream is used in its conventional sense to mean a location which at a location in the vasculature upstream with respect to the direction of blood flow from the end of the aspiration element.

Bernard teaches that sensor 108 is located outside of the body, as shown in the following figure 1:



Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,488

As such, Bernard teaches that the sensor should be *downstream* of the aspiration element, not upstream as claimed in the present claims.

Accordingly, the combined teaching of Movahed in view of Bernard teaches that if a detector is employed, it should be downstream from the aspiration element. Therefore, the combined teaching in fact teaches away from the claims invention.

Accordingly, Claims 22-44, 47, 50 and 80 are not obvious under 35 U.S.C. § 103 (a) as obvious over Movahed in view of Bernard and this rejection may be withdrawn.

Claims 45, 46, 48 and 51 were rejected under 35 U.S.C. § 103 (a) over Movahed in view of Bernard and further in view of Nichols. As reviewed above, the teaching of Movahed in view of Bernard fails to teach or suggest, and in fact teaches away from, a detector present at an upstream location of a non-occlusive aspiration element. Since Nichols was cited solely for its asserted teaching of sealable and non-sealable distal fenestrae, Nichols fails to make up the deficiency in Movahed in view of Bernard and this rejection may be withdrawn.

Claims 81-83 were rejected under 35 U.S.C. § 103 (a) over Movahed in view of Bernard and further in view of MacMahon. As reviewed above, the teaching of Movahed in view of Bernard fails to teach or suggest, and in fact teaches away from, a detector present at an upstream location of a non-occlusive aspiration element. Since MacMahon was cited solely for its asserted teaching of a fiberoptic detector, MacMahon fails to make up the deficiency in Movahed in view of Bernard and this rejection may be withdrawn.

Finally, Claim 66 was rejected under 35 U.S.C. § 103 (a) over Movahed in view of Bernard and further in view of Rioux. As reviewed above, the teaching of Movahed in view of Bernard fails to teach or suggest, and in fact teaches away from, a detector present at an upstream location of a non-occlusive aspiration element. Since Rioux was

Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,468

cited solely for its asserted teaching of instructions for a kit, Rioux fails to make up the deficiency in Movahed in view of Bernard and this rejection may be withdrawn.

Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,468

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number CATH-001.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP

Date: April 3, 2006

By: 

Bret E. Field
Registration No. 37,620

BOZICEVIC, FIELD & FRANCIS LLP
1900 University Avenue, Suite 200
East Palo Alto, California 94303
Telephone: (650) 327-3400
Facsimile: (650) 327-3231

F:\DOCUMENT\CATH001\cath-001 response to office action of 2-13-06.doc